

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
WASHINGTON, D.C. 20579

IN THE MATTER OF THE CLAIM OF

JESUS ANTONIO PRIETO

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-3255

Decision No. CU
3966

Counsel for claimant:

Ferrell and Young

PROPOSED DECISION

This claim against the Government of Cuba, filed under Title V of the International Claims Settlement Act of 1949, as amended, in the amount of \$94,750.00, was presented by JESUS ANTONIO PRIETO, and is based upon the loss of certain pesos assertedly taken from claimant by officials of the Government of Cuba in Havana, Cuba. Claimant has been a national of the United States since his naturalization on May 14, 1934.

Under Title V of the International Claims Settlement Act of 1949 [78 Stat. 1110 (1964), 22 U.S.C. §§1643-1643k (1964), as amended, 79 Stat. 988 (1965)], the Commission is given jurisdiction over claims of nationals of the United States against the Government of Cuba. Section 503(a) of the Act provides that the Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims by nationals of the United States against the Government of Cuba arising since January 1, 1959 for

losses resulting from the nationalization, expropriation, intervention or other taking of, or special measures directed against, property including any rights or interests therein owned wholly or partially, directly or indirectly at the time by nationals of the United States.

Section 502(3) of the Act provides:

The term 'property' means any property, right, or interest including any leasehold interest, and debts owed by the Government of Cuba or by enterprises which have been nationalized, expropriated, intervened, or taken by the Government of Cuba and debts which are a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba.

Section 504 of the Act provides, as to ownership of claims, that

(a) A claim shall not be considered under section 503(a) of this title unless the property on which the claim was based was owned wholly or partially, directly or indirectly by a national of the United States on the date of the loss and if considered shall be considered only to the extent the claim has been held by one or more nationals of the United States continuously thereafter until the date of filing with the Commission.

The Regulations of the Commission provide:

The claimant shall be the moving party and shall have the burden of proof on all issues involved in the determination of his claim. (FCSC Reg., 45 C.F.R. §531.6(d) (Supp. 1967).)

Claimant stated that on March 4, 1959, he and Edward A. Solomon arrived at the Rancho Boyeros Airport in Havana; that they were carrying 189,500 Cuban pesos, all of which was assertedly the property of the claimant; that the local police confiscated the money and imprisoned claimant and Mr. Solomon for 21 days; and that they were informed by Cuban authorities that the money in question would be deposited in the National Bank of Cuba in the name of claimant but were given no receipt.

By Commission letter of June 20, 1967, claimant was advised, through counsel, as to the type of evidence appropriate for submission in this matter. Thereafter, the Commission made additional suggestions to claimant, through counsel, in letters of July 20 and 25, 1967, with respect to the submission of supporting evidence pertaining to the ownership, loss and value of the property, subject of the claim.

The claimant submitted copies of various newspaper clippings and a signed receipt from a Cuban attorney acknowledging the receipt of \$1,000.00 from claimant as a legal fee in connection with "obtaining freedom" for claimant and Mr. Solomon from the prison where they were held for bringing money into Cuba. The file also contains copy of a form prepared by the officials of the Government of Cuba showing that claimant was provisionally freed from prison on April 3, 1959. Claimant has also submitted copy of an affidavit executed by Edward A. Solomon on April 8, 1959 stating the funds belonged to claimant.

An undated press clipping from an unidentified newspaper, with the headline "Four Americans Released After 19 Days in Jail", refers to four persons, including claimant, Mr. Solomon, Zenia Thornadakis and Elaine Mitchell, as being provisionally released from prison, while Frank Rodriguez and Sam Harris were retained in prison; and that they were expected to face Court hearings. The article states that according to police, Mr. Solomon was carrying 150,000 pesos, Prieto (claimant) 37,500 pesos and Thornadakis and Mitchell had 57,444 pesos between them hidden "in their undergarments". Further, this article indicated that Cuban authorities alleged the aforesaid persons, six in number, had purchased the pesos in the Miami (Florida) black market at a 65% discount. It relates that Cuban currency regulations forbid the importation of over 50 pesos in Cuban currency, a restriction imposed to prevent the return to Cuba of millions of pesos "stolen" by exiled officials of the deposed Cuban government.

Other evidence, including the affidavit of Mr. Solomon, indicates that affiant was carrying 159,000 pesos and claimant was carrying 30,500 pesos at the time of arrest; that such sums were assertedly deposited to the credit of both in the Cuban National Bank although no receipts were issued. The files of this Commission do not disclose the nationality of the other persons listed herein nor have they filed claims for loss of property in Cuba.

The Commission finds that the evidence of record herein is unclear and contradictory with respect to the ownership, loss and value of the pesos, subject of this claim. The Commission appreciates the difficulties

encountered by some claimants in establishing their claims against the Government of Cuba. However, the Commission must be guided by the evidence of record pertaining to the ownership, loss and value of the property included in each claim. Based on the evidence of record herein, the Commission finds that claimant has not met the burden of proof in that he has failed to establish the extent of his ownership of rights and interests in funds which were assertedly taken by the Government of Cuba. Moreover, even if claimant's ownership were shown, the record does not establish that the taking described comes within the purview of Title V of the Act inasmuch as a violation of international law must be shown in a claim for nationalization or other taking. (See Claim of Geraldine Isabella Shamma, a/k/a Geraldine I. Suarez, Claim No. CU-2593.)

Accordingly, the Commission is constrained to deny this claim and it is hereby denied. The Commission deems it unnecessary to make determinations with respect to other elements of the claim.

Dated at Washington, D. C.,
and entered as the Proposed
Decision of the Commission

OCT 1 1969

Leonard v. B. Sutton
~~Leonard v. B. Sutton, Chairman~~

Theodore Jaffe

~~Theodore Jaffe, Commissioner~~

Sidney Jendberg

~~Sidney Jendberg, Commissioner~~

NOTICE: Pursuant to the Regulations of the Commission, if no objections are filed within 15 days after service or receipt of notice of this Proposed Decision, the decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after such service or receipt of notice, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. 531.5(e) and (g) as amended, 32 Fed. Reg. 412-13 (1967).)

CU-3255